

JURY INSTRUCTIONS GIVEN

FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy/prejudice/fear/public opinion to influence you. You should not be influenced by any person's race, color, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

FILED

MAR 13 2018

Judge Thomas M. Durkin
United States District Court

3/13/2018

EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

STIPULATIONS OF FACT

The parties have stipulated, or agreed, to certain facts that have been read to you by the attorneys. You must treat these facts as having been proved for the purpose of this case.

WHAT IS NOT EVIDENCE

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

CONSIDERATION OF ALL EVIDENCE REGARDLESS OF WHO PRODUCED

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

WEIGHING THE EVIDENCE

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

TESTIMONY OF WITNESSES: DECIDING WHAT TO BELIEVE

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- the witness's age;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case.

PRIOR INCONSISTENT STATEMENTS

You may consider statements given by a Party or a Witness under oath before trial as evidence of the truth of what he or she said in the earlier statements, as well as in deciding what weight to give his or her testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his or her testimony here in court, you may consider the earlier statement or conduct only in deciding whether his or her testimony here in court was true and what weight to give to his or her testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

OPINION WITNESSES

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

DEMONSTRATIVE EXHIBITS

Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I have asked a witness a question myself. Do not assume that because I ask questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

NOTE-TAKING

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial.

ALL LITIGANTS EQUAL BEFORE THE LAW

All parties are equal before the law. Plaintiff and Defendants are entitled to the same fair consideration.

MULTIPLE CLAIMS; MULTIPLE DEFENDANTS

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, the other is also liable.

ISSUES

The plaintiff in this case is Alice Howell, who is the legal representative of the Estate of Justus Howell, who is deceased. The defendants in this case are Eric Hill, a police officer for the City of Zion, Illinois, and the City of Zion, Illinois.

The plaintiff brings two claims in this case. First, she brings a claim against Eric Hill, alleging that he used excessive force against Justus Howell, in violation of the United States Constitution. Eric Hill denies that claim. Second, she claims that Eric Hill and the City of Zion, through the actions of Eric Hill, wrongfully caused the death of Justus Howell, by what is called willful and wanton conduct, in violation of state law. Eric Hill and the City of Zion deny that claim as well.

BURDEN OF PROOF

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

EXCESSIVE FORCE – ELEMENTS

In this case, Plaintiff Alice Howell's federal law claim is that Defendant Eric Hill used unreasonable force against Justus Howell. To succeed on this claim, Plaintiff must prove the following element by a preponderance of the evidence:

1. Defendant Eric Hill used unreasonable force against Justus Howell.

If you find that Plaintiff has proved this by a preponderance of the evidence against Defendant Eric Hill, then you should find for Plaintiff.

If, on the other hand, you find that Plaintiff did not prove this by a preponderance of the evidence, then you should find for Defendant Eric Hill.

EXCESSIVE FORCE - DEFINITION OF “UNREASONABLE”

In performing his job, an officer can use force that is reasonably necessary under the circumstances.

In deciding whether Eric Hill used unreasonable force, you should consider all of the circumstances. Circumstances you may consider include the need for the use of force, the relationship between the need for the use of force and the amount of force used, the extent of Justus Howell's injury, any efforts made by Eric Hill to temper or limit the amount of force, the severity of the crime at issue, the threat reasonably perceived by the officer and whether Justus Howell was actively resisting or was attempting to evade arrest by fleeing, but you are not limited to these circumstances.

An officer may use deadly force when a reasonable officer, under the same circumstances, would believe that the suspect's actions placed him or others in the immediate vicinity in imminent danger of death or serious bodily harm. It is not necessary that this danger actually existed. An officer is not required to use all practical alternatives to avoid a situation where deadly force is justified.

You must decide whether Eric Hill's use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that he faced. You must make this decision based on what the officer knew at the time of the use of force, not based on matters learned after the use of force. In deciding whether Eric Hill's use of force was unreasonable, you must not consider whether his intentions were good or bad.

RESPONDEAT SUPERIOR

For purposes of Plaintiff's claim for violation of state law, Eric Hill was the agent of the Defendant, City of Zion at the time of this occurrence. Therefore, for purposes of Plaintiff's claim for violation of state law, any act or omission of the agent at the time was in law the act or omission of the Defendant City of Zion.

PROXIMATE CAUSE

When I use the expression “proximate cause,” I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with some other cause acting at the same time, which in combination with it, causes the injury.

ILLINOIS STATE LAW CLAIM – ELEMENTS

Plaintiff Alice Howell, as the Independent Administrator of the estate of Justus Howell, brings a claim of battery against Defendant City of Zion and Defendant Eric Hill, for the actions of Defendant Hill. To succeed on this claim, Plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Defendant Eric Hill, an employee or agent of the City of Zion, intended to make contact with the body of Justus Howell;
2. Defendant Eric Hill did make contact with the body of Justus Howell;
3. The contact was harmful or offensive and unjustified as that term is defined in the “Use of Force under Illinois Law” instruction; and
4. The conduct of Defendant Eric Hill was willful and wanton.

If you find that Plaintiff has proven each of these things by a preponderance of the evidence against Defendant City of Zion and Defendant Eric Hill, then you should find for Plaintiff.

If, on the other hand, you find that Plaintiff did not prove these things by a preponderance of the evidence as to Defendant City of Zion and Defendant Eric Hill, then you should find for Defendants.

WILLFUL AND WANTON CONDUCT – DEFINITION

When I use the expression “willful and wanton conduct” I mean a course of action which shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for the rights of Justus Howell.

USE OF FORCE UNDER ILLINOIS LAW

Under Illinois Law, a police officer is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or some other person, or when he reasonably believes such force was necessary to prevent an arrest from being defeated by resistance or escape and the person is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

SELECTION OF PRESIDING JUROR

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read]

Take these forms to the jury room, and when you have reached a unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

COMMUNICATION WITH THE COURT

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

NEED FOR UNANIMOUS VERDICT

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Please sign and date below. Return the entire Verdict Form to the Courtroom Security Officer
(Each juror must sign the form).

Date: _____

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror
